

Office of Tribal Relations, Office of the Secretary

MEMBERSHIP BALANCE PLAN

1. Committee's Official Designation

Council for Native American Farming and Ranching.

2. Authority

Section XII.A of the Settlement Agreement that resolves *Keepseagle v. Vilsack*, 99-CV-03119 (D.D.C.) approved by the United States District Court for the District of Columbia requires the Secretary of Agriculture to establish The Council for Native American Farming and Ranching (hereinafter referred to as the "Council"). The Secretary re-establishes the Council pursuant to the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2.

3. Objectives and Scope of Activities

The objective and purpose of this Council is: (1) to advise the Secretary of Agriculture on issues related to the participation of Native American farmers and ranchers in USDA farm loan programs; and (2) to transmit recommendations concerning any changes to FSA regulations or internal guidance or other measures that would eliminate barriers to program participation for Native American farmers and ranchers; (3) to examine methods of maximizing the number of new farming and ranching opportunities created through the farm loan program through enhanced extension and financial literacy services; (4) to examine methods of encouraging intergovernmental cooperation to mitigate the effects of land tenure and probate issues on the delivery of USDA farm loan programs; (5) to evaluate other methods of creating new farming or ranching opportunities for Native American producers; and (6) to address other related issues as deemed appropriate.

4. Points of View Needed for the Committee

According to the terms of the Settlement Agreement (referenced above) approved by the United States District Court for the District of Columbia, the Council shall consist of 15 members appointed by the Secretary of Agriculture. To ensure that the recommendations of the Council have taken into account the needs of the diverse groups served by USDA, membership shall also include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities as well as persons who represent a diverse range of experience in different types of production agriculture. In addition, regional balance will be sought so that those

representing Native American farmer and ranchers are sought and seated from throughout the country.

- a. Of the 15 members, no fewer than eleven will be selected to represent the interests of Native American farmers and ranchers.
- b. In addition to Native American farmers or ranchers and persons who represent the interests of Native American farmers or ranchers, members shall also include representatives from the following groups:
 - (1) The Farm Service Agency Administrator or his or her delegate;
 - (2) The Director, Office of Tribal Relations, or his or her delegate;
 - (3) The Assistant Secretary for Civil Rights or his or her delegate;
 - (4) The Deputy Administrator for Farm Loan Programs or his or her delegate

In the event these USDA job titles change or are eliminated during the Term of the Settlement Agreement (five years from the date of final approval by the Court), these roles will be filled by other senior management officials appointed by the Secretary.

- c. Members shall be appointed by the Secretary and shall serve no longer than six (6) years. The Committee shall be composed of not more than 15 members and may include:
 - (1) Native American farmers or ranchers who have participated in USDA loan or payment programs;
 - (2) Representatives of organizations with a history of working with Native American farmers or ranchers;
 - (3) Civil rights professionals;
 - (4) Representatives of tribal governments with demonstrated experience working with Native American farmers or ranchers; and
 - (5) Such other persons as the Secretary considers appropriate.
- d. Every effort will be made to ensure that the membership of this Committee is balanced, nevertheless, USDA recognizes that committee membership is not static and may change, depending on the work of the committee.
- e. The Council shall elect a Chairperson. A quorum shall consist of 8 members of the Council being present either in person or through telephonic or video conferencing means. At least one of those eight persons must be a Council member who represents USDA.

5. Other Balance Factors

Equal opportunity practices in accordance with USDA policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Council have taken into account the needs of the diverse groups served by USDA, membership shall also include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities as well as persons who represent a diverse range of experience in different types of production agriculture. In addition, regional balance will be sought so that those representing Native American farmer and ranchers are sought and seated from throughout the country.

6. Candidate Identification Process

Solicitation of nominations will occur through the Federal Register process and through requesting additional nominations from qualified individuals from both the Keepseagle Class Counsel, Tribal elected leaders, key national and regional intertribal organizations, and through publishing notice of vacancies and solicitation of nominations through the Federal Register.

Once candidates have been identified, their names and background data are submitted to the USDA White House Liaison's office for vetting. The vetting process includes a background check to determine if any of the candidates have a conflict of interest that would prohibit them from serving on the committee due to criminal or ethical violations.

Candidates will be further scrutinized by the USDA Farm Service Agency and the USDA Office of Tribal Relations according to governing statutes, regulations and administration policy. Candidates will then be submitted for final recommendation(s) to the USDA Chief of Staff (COS). The COS will submit a list of candidates to the Secretary for appointment.

7. Subcommittee Balance

No subcommittees existed at the inauguration of the Council. The Designated Federal Officer (DFO) has the authority to create subcommittees and membership on the subcommittees should be approved by the DFO. Subcommittees must report back to the Council, and must not provide advice or work products directly to the Secretary. The process for determining membership balance of subcommittees is the same as the process for the Council.

8. Other. No other identifiable issues at this time.

9. Date Prepared or Updated: December __, 2013

10. Legal Background

Section 5(b)(2) of the FACA requires "...the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." The corresponding FACA regulations reiterate this requirement at 41 CFR § 102-3.30(c), and, for discretionary committees being established, renewed, or reestablished, require agencies to provide a description of their plan to attain fairly balanced membership

during the charter consultation process with GSA (41 CFR § 102-3.60(b)(3)). The document created through this process is the Membership Balance Plan. The regulations further clarify that (1) the purpose of the membership balance plan is to ensure “that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee;” and (2) “[a]dvisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.” (41 CFR § 102-3.60(b)(3)).

FACA mandates that Federal advisory committees be balanced in the points of view represented by the members, but leaves it to the discretion of each agency on how to do this. The FACA regulations offer guidance in achieving a balanced Federal advisory committee membership, which include considering:

- (i) The Federal advisory committee’s mission;
- (ii) The geographic, ethnic, social, economic, or scientific impact of the Federal advisory committee’s recommendations;
- (iii) The types of specific perspectives required, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors;
- (iv) The need to obtain divergent points of view on the issues before the Federal advisory committee; and
- (v) The relevance of State, local, or tribal governments to the development of the Federal advisory committee’s recommendations.” (41 CFR § III of App. A to Subpart B)